

FCC FORM NO. 1

Federal Communications Commission

FCC 00-232

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition of Bell Atlantic for Forbearance from)
Section 272 Requirements in Connection) CC Docket No. 97-172
With National Directory Assistance Services)

MEMORANDUM OPINION AND ORDER

Adopted: June 26, 2000

Released: July 12, 2000

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. On January 21, 2000, Excell Agent Services, L.L.C. (Excell) filed an application for review¹ of the Common Carrier Bureau's Memorandum Opinion and Order in the above captioned proceeding.² Bell Atlantic, INFONXX, and SBC filed pleadings in response to Excell's application for review.³ In the *Bell Atlantic-North Forbearance Order*, the Common Carrier Bureau concluded that Bell Atlantic could continue to provide nonlocal directory assistance service without obtaining authorization from the Commission to provide in-region, interLATA service.⁴ For the reasons discussed below, we deny Excell's application for review.

¹ Excell Agent Services, L.L.C. Application for Review (filed Jan. 21, 2000) (Excell Application for Review).

² *Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, DA 99-2990 (rel. Dec. 22, 1999)(*Bell Atlantic-North Forbearance Order*). The order extended only to Bell Atlantic's operating companies in New York and New England. *Bell Atlantic-North Forbearance Order* at n.1.

³ Specifically, on February 7, 2000, Bell Atlantic filed an opposition to Excell's application for review (Bell Atlantic Opposition), to which Excell replied on February 17, 2000. INFONXX and SBC filed comments in this proceeding on April 3, 2000. Bell Atlantic replied on April 12, 2000, to INFONXX's comments in support of Excell's application for review. Finally, on April 12, 2000, Excell filed an opposition to SBC's comments regarding Excell's application for review.

⁴ *Bell Atlantic-North Forbearance Order* at para. 1. In that order, the Bureau concluded that Bell Atlantic's provision of nonlocal directory assistance service to its in-region subscribers constituted the provision of in-region,

II. DISCUSSION

2. In the *Bell Atlantic-North Forbearance Order*, the Bureau required that Bell Atlantic must, among other things, make available to unaffiliated entities all of the in-region telephone numbers Bell Atlantic uses to provide nonlocal directory assistance service at the same rates, terms, and conditions it imputes to itself, pursuant to section 272(c)(1) of the Act.⁵ Excell claims that by allowing Bell Atlantic to charge third parties the same amounts that it imputes to itself, the Bureau allowed Bell Atlantic to impose charges that are unjustly and unreasonably discriminatory.⁶ Excell states that the imputed rates stifle competition, harm consumers, and are contrary to the public interest.⁷ Excell further states that the Bureau did not explain in the *Bell Atlantic-North Forbearance Order* how the imputation requirements ensure just and reasonable rates, terms, and conditions.⁸ Excell contends that the Bell Operating Companies can manipulate the nondiscrimination requirements in a manner that permits them to continue to charge unaffiliated entities anti-competitive rates for directory assistance data.⁹ Excell states that Bell Atlantic's Cost Allocation Manual revisions demonstrate that the costs Bell Atlantic imputes to itself include the costs of services that Excell has not requested and does not need.¹⁰ Excell adds that Bell Atlantic requires some directory assistance providers to purchase a minimum number of

interLATA service as defined in section 271(a) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 271(a). The Bureau further concluded, however, that these services fall within the scope of the exception provided in section 271(g)(4), 47 U.S.C. § 271(g)(4), thus allowing Bell Atlantic to provide the services without obtaining authorization from the Commission pursuant to the requirements of section 271(d), 47 U.S.C. § 271(d). *Id.* at para. 1.

⁵ *Bell Atlantic-North Forbearance Order* at para. 2; 47 U.S.C. § 272(c)(1). The Commission previously established the same requirements for U S WEST in a similar proceeding. *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, CC Docket 97-172, *Petition of U S WEST Communications, Inc. for Forbearance*, CC Docket No. 97-172, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Memorandum Opinion and Order, 14 FCC Rcd 16252 (1999) (*U S WEST Forbearance Order*), at para. 37. The Bureau subsequently applied these requirements to BellSouth, SBC, and the remaining Bell Atlantic companies. *BellSouth Petition for Forbearance for Nonlocal Directory Assistance Service*, *Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services*, *Petition of Bell Atlantic for Further Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, DA 00-514 (rel. Apr. 11, 1999) (*BellSouth, SBC, Bell Atlantic Forbearance Order*).

⁶ Excell Application for Review at 2.

⁷ *Id.*

⁸ *Id.* at 4.

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

listings.¹¹ Excell concludes, “the Bureau’s Order does not adequately safeguard unaffiliated entities from nondiscriminatory behavior.”¹² Excell requests that the Commission apply any safeguards adopted in CC Docket No. 99-273 to Bell Atlantic on a retroactive basis.¹³

3. Bell Atlantic asserts that the Bureau correctly followed to the letter the Commission’s earlier decision in the *U S WEST Forbearance Order*, which granted identical relief to U S WEST.¹⁴ Bell Atlantic adds that it does not charge directory assistance providers for capabilities the providers do not use, and that its contracts with directory assistance providers “do not contain any numerical minima.”¹⁵ Bell Atlantic concludes that the Bureau correctly left the issues involved in CC Docket No. 99-273 for that proceeding.¹⁶

4. We deny Excell’s application for review. In the *U S WEST Forbearance Order*, we concluded that “U S WEST must make available to unaffiliated entities all of the in-region directory listing information it uses to provide regionwide directory assistance service at the same rates, terms, and conditions it imputes to itself.”¹⁷ In acting on Bell Atlantic’s forbearance petition for national directory assistance services, the Common Carrier Bureau followed our decision in the *U S WEST Forbearance Order*.¹⁸ As the *Bell Atlantic-North Forbearance Order* is consistent with the *U S WEST Forbearance Order*, we affirm the Bureau’s decision on Bell Atlantic’s forbearance petition. Contrary to Excell’s assertions, we believe that the Order adequately safeguards unaffiliated entities from nondiscriminatory behavior. Furthermore, we affirm the Bureau’s conclusion that any specific claims that Bell Atlantic has failed to comply with the requirements set forth in section 272(c)(1) of the Act, or the *Bell Atlantic-North Forbearance Order*, are more appropriately addressed in the context of an enforcement proceeding.¹⁹

¹¹ *Id.* at 5. See also *Id.* at 4-6.

¹² *Id.* at 6.

¹³ *Id.* at 10. That docket addresses issues relating to the provision of directory listing information. *Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, Notice of Proposed Rulemaking, FCC 99-227 (rel. Sept. 9, 1999).

¹⁴ Bell Atlantic Opposition at 1.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 4.

¹⁷ *U S WEST Forbearance Order* at para. 37.

¹⁸ *Bell Atlantic-North Forbearance Order* at para. 2. See also *U S WEST Forbearance Order* at para. 37.

¹⁹ *Bell Atlantic-North Forbearance Order* at para. 19.

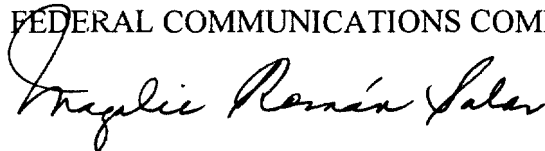
IV. CONCLUSION

5. For the reasons set forth above, we deny Excell's application for review.

V. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 10, 272, 303(r), 47 U.S.C. §§ 154(i), 160, 272, and 303(r) of the Communications Act of 1934, as amended, that Excell's application for review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Magalie Roman Salas".

Magalie Roman Salas
Secretary